

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DONALD JONES and ROYA REZAI,  
husband and wife,

Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK,

Defendant.

Case No. 3:18-CV-05062-BHS

**DEFENDANT NATIONAL  
RAILROAD PASSENGER  
CORPORATION D/B/A AMTRAK'S  
ANSWER & AFFIRMATIVE  
DEFENSES TO COMPLAINT**

**JURY DEMAND**

Defendant National Railroad Passenger Corporation d/b/a Amtrak ("Amtrak") responds  
as follows to Plaintiff's Complaint ("Complaint"):

**ANSWER**

**I. PLAINTIFFS' INTRODUCTION**

1.1 Amtrak admits that at approximately 7:33 a.m. on December 18, 2017, Amtrak Cascades Train 501 was traveling on the Point Defiance Bypass section of the Lakewood Subdivision, a section of trackage over which it has operating rights, and a portion of the train derailed. Except as expressly admitted herein, Amtrak denies the allegations of Paragraph 1.1 of the Complaint.

1.2 Amtrak denies the allegations of Paragraph 1.2 of the Complaint.

1.3 Amtrak denies the allegations of Paragraph 1.3 of the Complaint, except that it admits that Amtrak Cascades Train 501 was traveling in excess of the allowable speed at some

1 point prior to the derailment.

2 1.4 Amtrak denies the allegations of Paragraph 1.4 of the Complaint.

3 1.5 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the  
4 allegations of Paragraph 1.5 of the Complaint and therefore denies the same.

5 1.6 Amtrak denies the allegations of Paragraph 1.6 except that it acknowledges that  
6 three of the passengers of Amtrak Cascades Train 501 lost their lives on December 18, 2017.

7 1.7 Amtrak denies the allegations of Paragraph 1.7 of the Complaint.

8 1.8 Amtrak denies the allegations of Paragraph 1.8 of the Complaint.

9 1.9 Amtrak denies the allegations of Paragraph 1.9 of the Complaint.

10 1.10 Amtrak denies the allegations of Paragraph 1.10 of the Complaint.

11 1.11 Amtrak denies the allegations of Paragraph 1.11 of the Complaint.

12 1.12 Amtrak denies the allegations of Paragraph 1.12 of the Complaint.

13 **II. PLAINTIFFS' IDENTIFICATION OF PARTIES**

14 2.1 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the  
15 allegations of Paragraph 2.1 of the Complaint and therefore denies the same.

16 2.2 Amtrak admits the first two sentences of Paragraph 2.2 of the Complaint. Amtrak  
17 admits further admits that it participates in the operation of Amtrak Cascades Train 501, which  
18 operates between Seattle, Washington and Portland, Oregon. Except as expressly admitted  
19 herein, Amtrak denies the allegations of Paragraph 2.2 of the Complaint.

20 2.3 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the  
21 allegations of Paragraph 2.3 of the Complaint and therefore denies the same.

22 **III. PLAINTIFFS' STATEMENT OF JURISDICTION AND VENUE**

23 Amtrak states that the allegations regarding jurisdiction and venue in Paragraphs 3.1 and  
24 3.2 of the Complaint are moot given the removal of this action to the United States District Court  
25 for the Western District of Washington, where jurisdiction and venue are proper.

**IV. PLAINTIFFS' STATEMENT OF FACTS**

4.1 Amtrak admits that on December 18, 2017, Amtrak Cascades Train 501 service originated in Seattle, Washington and was destined for stops in Washington and in Portland, Oregon. Except as expressly admitted herein, Amtrak denies the allegations of Paragraph 4.1 of the Complaint.

4.2 Amtrak lacks information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4.2 of the Complaint and therefore denies the same.

4.3 Amtrak admits that at approximately 7:33 a.m. on December 18, 2017, Amtrak Cascades Train 501 was traveling on the Point Defiance Bypass section of the Lakewood Subdivision, a section of trackage over which it has operating rights. Except as expressly admitted herein, Amtrak denies the allegations of Paragraph 3.4 of the Complaint.

4.4 Amtrak denies the allegations of Paragraph 4.4 of the Complaint.

4.5 Amtrak denies the allegations of Paragraph 4.5 of the Complaint.

4.6 Amtrak denies the allegations of Paragraph 4.6 of the Complaint.

4.7 Amtrak denies the allegations of Paragraph 4.7 of the Complaint, except that it admits that Amtrak Cascades Train 501 was traveling in excess of the allowable speed at some point prior to the derailment.

4.8 Amtrak denies the allegations of Paragraph 4.8 of the Complaint.

4.9 Amtrak denies the allegations of Paragraph 4.9 of the Complaint.

4.10 Amtrak denies the allegations of Paragraph 4.10 of the Complaint.

4.11 Amtrak denies the allegations of Paragraph 4.11 of the Complaint.

4.12 Amtrak denies the allegations of Paragraph 4.12 of the Complaint.

4.13 Amtrak denies the allegations of Paragraph 4.13 of the Complaint.

4.14 Amtrak denies the allegations of Paragraph 4.14 of the Complaint.

4.15 Amtrak denies the allegations of Paragraph 4.15 of the Complaint.

4.16 Amtrak denies the allegations of Paragraph 4.16 of the Complaint.

4.17 Amtrak denies the allegations of Paragraph 4.17 of the Complaint.

1 4.18 Amtrak denies the allegations of Paragraph 4.18 of the Complaint.

2 4.19 Amtrak denies the allegations of Paragraph 4.19 of the Complaint.

3 4.20 Amtrak denies the allegations of Paragraph 4.20 of the Complaint.

4 4.21 Amtrak denies the allegations of Paragraph 4.21 of the Complaint.

5 4.22 Amtrak denies the allegations of Paragraph 4.22 of the Complaint, except that in  
6 this civil action, Amtrak will not contest liability for compensatory damages proximately caused  
7 by the derailment of Train 501 on December 18, 2017.

8 4.23 Amtrak denies the allegations of Paragraph 4.23 of the Complaint, except that in  
9 this civil action, Amtrak will not contest liability for compensatory damages proximately caused  
10 by the derailment of Train 501 on December 18, 2017.

11 **V. ALLEGED CAUSES OF ACTION**

12 **A. COUNT I – ALLEGED NEGLIGENCE**

13 5.1 Amtrak re-alleges the paragraphs set forth above and below.

14 5.2 Amtrak admits that it was a common carrier of Plaintiff Jones. Except as  
15 expressly admitted herein, Amtrak denies the allegations of Paragraph 5.2.

16 5.3 Amtrak denies the allegations of Paragraph 5.3 of the Complaint, except that in  
17 this civil action, Amtrak will not contest liability for compensatory damages proximately caused  
18 by the derailment of Train 501 on December 18, 2017.

19 5.4 Amtrak denies the allegations of Paragraph 5.4 of the Complaint, except that in  
20 this civil action, Amtrak will not contest liability for compensatory damages proximately caused  
21 by the derailment of Train 501 on December 18, 2017.

22 **B. COUNT II – ALLEGED VIOLATION OF THE WASHINGTON CONSUMER  
23 PROTECTION ACT (“CPA”)**

24 5.5 Amtrak re-alleges the paragraphs set forth above and below.

25 5.6 Amtrak denies the allegations of Paragraph 5.6.

26 5.7 Amtrak denies the allegations of Paragraph 5.7.

27 5.8 Amtrak denies the allegations of Paragraph 5.8.

1                                   **VI.     PLAINTIFFS' PRAYER FOR RELIEF**

2           Amtrak denies that Plaintiff is entitled to the relief sought in the Complaint.

3                                   **AFFIRMATIVE DEFENSES**

4           By way of further answer and affirmative defenses to Plaintiffs' Complaint, Amtrak  
5 alleges as follows:

6           1.     To the extent Plaintiffs have failed to mitigate their damages, any recovery should  
7 be reduced accordingly.

8           2.     Any claim for punitive damages is barred by 49 U.S.C. § 28103.

9           3.     Any claim for punitive damages is barred by the United States Constitution,  
10 including, *inter alia*, the Due Process, Equal Protection and Excessive Fines Clauses, as well as  
11 the Washington Constitution and applicable statutory provisions.

12          4.     Plaintiffs' award, if any, is controlled and limited by the applicable provisions of  
13 49 U.S.C. § 28103.

14          5.     To the extent certain expenses incurred by Plaintiffs arising from the incident in  
15 question have been paid by Amtrak, any recovery by Plaintiffs should be reduced to the extent  
16 of such payments pursuant to the doctrine of accord and satisfaction.

17          6.     Amtrak reserves the right to amend this answer and affirmative defenses to allege  
18 additional defenses, add additional parties, and bring third-party claims, as may be identified  
19 during the course of discovery and investigation.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered Plaintiffs' Complaint and set forth its affirmative defenses Amtrak prays as follows:

1. That Amtrak be granted its costs, including reasonable attorneys' fees, incurred in defending this action; and

2. That the Court grant Amtrak such other relief as it deems just and equitable under the circumstances.

DATED this 26th day of February 2018.

LANE POWELL PC

By: /s/ Tim D. Wackerbarth

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Passenger Corporation d/b/a Amtrak

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant National Railroad Passenger Company d/b/a Amtrak herein requests a jury trial by a jury of twelve in the above-referenced matter.

DATED this 26th day of February 2018.

LANE POWELL PC

By: /s/ Tim D. Wackerbarth  
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**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 26<sup>th</sup> day of February, 2018, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Darrell L. Cochran  
Thomas B. Vertetis  
Christopher E. Love  
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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Executed on the 26<sup>th</sup> day of February, 2018, at Seattle, Washington.

  
Sabrina Mitchell